

Internal Revenue Service

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Person To Contact:

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Refer Reply To:

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PLR-113558-06

Date:

March 06, 2007

Legend

Trust 1 =

Trust 2 =

Grantor 1 =

Date 1 =

Beneficiary =

Individual 1 =

Individual 2 =

Wife =

Trustee =

Grantor 2 =

Date 2 =

Son =

Individual 3 =

Trust 3 =

Firm 1 =

Firm 2 =

State =

Statute

Dear :

This is in response to your authorized representative's letter date January 27, 2006, and subsequent correspondence, requesting rulings regarding the estate, gift, and generation-skipping transfer (GST) tax consequences of proposed distributions from Trust 1 and Trust 2.

Trust 1

Grantor 1 created Trust 1, an irrevocable trust, on Date 1 for the primary benefit of Beneficiary. Article Third of the Trust 1 Agreement provides that net income may be paid to or for the benefit of any one or more or none of the class of persons consisting of Individual 1, Individual 2, Wife and the children and grandchildren of Grantor 1, in the sole discretion of the trustee, and any net income not so paid or applied shall be accumulated and added to the trust estate.

Article Fourth of the Trust 1 Agreement provides that at any time during the trust term, the trustee may in its sole and absolute discretion pay over all or part of the trust estate to or for the benefit of Wife, Beneficiary, or Beneficiary's children.

Article Fifth of the Trust 1 Agreement provides that Trust 1 shall terminate when the youngest child of Grantor 1 reaches age 30 or when Wife has died, whichever occurs last.

Article Sixth of the Trust 1 Agreement provides that, upon termination, the trustee shall distribute the trust estate to Beneficiary. If Beneficiary is no longer living, the trustee shall distribute the trust estate to Beneficiary's child(ren). If there are none, the trustee shall distribute the trust estate to the living issue of Grantor 1.

Article Tenth of the Trust 1 agreement provides that any trustee may resign and designate a successor trustee(s), either individual or corporate, provided there shall not be more than one corporate successor trustee at any time.

Trustee represents that no additions have been made to Trust 1 since its creation. As of the date of this letter, each child of Grantor 1 has reached the age of 30, Individual 1 and Individual 2 are deceased, and Wife is still living.

Trust 2

Grantor 2 created Trust 2, an irrevocable trust, on Date 2 for the primary benefit of Beneficiary.

Article Second, paragraph C of the Trust 2 Agreement provides that after the death of Grantor 2 and during the balance of the trust term, the trustee shall distribute the net income of the trust estate to, or apply the same for the benefit of, all or any one or more or none of the class of persons consisting of Individual 2, Son, Wife, and Son's

children and grandchildren as shall be living at the time of any payment or application, in such proportions (whether equal or unequal and even if all the net income shall be distributed to one person) as the trustee shall determine from time to time (but at least annually) in its absolute discretion. Any net income not so paid shall be accumulated and added to and disposed of as a part of the trust estate.

Article Third of the Trust 2 Agreement provides that Trust 2 shall terminate upon the death of the survivor of Grantor 2, Individual 2, and Wife, or when Beneficiary reaches thirty years of age, whichever occurs last. Upon termination of Trust 2, the trustee shall distribute the trust estate to Beneficiary. If Beneficiary is no longer living, the trustee shall distribute the trust estate to Beneficiary's living lineal descendants, per stirpes. If Beneficiary has no living lineal descendants, the trustee shall distribute the trust estate to Son's living lineal descendants, per stirpes. If Son has no living lineal descendants, the trustee shall distribute the trust estate to the living lineal descendants of Individual 3, per stirpes.

Article Fourth of the Trust 2 Agreement provides that at any time during the term of the trust and after the death of the survivor of Grantor 2 and Individual 2, the trustee may, in its sole discretion, pay over all or any part of the trust estate to or for the benefit of any one or more of the class of persons to whom the income from the trust estate shall or may then be paid.

Article Tenth of the Trust 2 agreement provides that any trustee may resign and designate a successor trustee(s), either individual or corporate, provided there shall not be more than one corporate successor trustee at any time.

Trustee represents that no additions have been made to Trust 2 since its creation. As of the date of this letter, Beneficiary has reached the age of 30, Grantor 2 and Individual 2 are deceased, and Wife is still living.

Trust 3

Grantor 1 proposes to establish Trust 3, an irrevocable trust, for the benefit of Beneficiary and her children. Article I of Trust 3 will provide that during Beneficiary's life, net income shall be added to principal. The trustee may pay to Beneficiary so much, including all, of the principal as the trustee (other than Beneficiary or any child of hers) shall, in the trustee's absolute discretion, deem necessary or advisable for any purpose. The trustee may also pay to or for the benefit of, or set apart for, any child of Beneficiary, in equal or unequal shares, so much of the trust principal as the trustee (other than Beneficiary or any child of hers) shall, in the trustee's absolute discretion, deem necessary or advisable for such child's maintenance or education, for any accident, illness, or other emergency affecting such child, or for any other purpose, provided that any share set apart for a child of Beneficiary would be dealt with under Article II.

On Beneficiary's death, Beneficiary, by will, may appoint the trust principal to a child of hers who survives her or to the estate of a child of hers who does not survive her. Beneficiary may not exercise her power of appointment in favor of her estate, her creditors, or the creditors of her estate. No exercise of this power of appointment will be effective unless property is distributed to a child of hers, such child's estate, or a trust for the benefit of such child that either terminates before such child's death or is includible in such child's estate. Any Trust 3 assets not effectively appointed by Beneficiary shall be distributed as follows: if any descendant of Beneficiary survives her, the trust estate would be divided into equal shares for each child of hers who survives her and each child of Beneficiary who does not survive her but has any descendants who survive her, and the shares would be dealt with under Article II. If no descendant of Beneficiary survives her, such property will be distributed to the grandchildren of Grantor 1 who survive Beneficiary, in equal shares.

Article II of the Trust 3 Agreement provides that any share set apart under Article I for a child of Beneficiary who is not then living will be distributed to such child's estate. Any share set apart for a child of Beneficiary who is then living shall be held in a lifetime trust for the child. On a child's death, the child has a general power of appointment over the trust estate that is exercisable in favor of the child, the child's estate, the child's creditors, or the creditors of the child's estate. If the child does not exercise the power of appointment, trust principal shall be distributed to the child's descendants who survive the child, per stirpes, or in default thereof, Beneficiary's descendants who survive the child, per stirpes, or in default thereof, the grandchildren of Grantor 1 who survive the child, in equal shares.

Article V, paragraph C of the Trust 3 Agreement provides that the presiding partner of Firm 1, or its successor, with the approval of the then chairman of the executive committee of Firm 2 or its successor, may appoint an individual or corporation as an additional or successor trustee of any trust hereunder. Paragraph D provides that there shall never be more than three individuals or more than two individuals and one corporation acting as trustee at any given time. Paragraph F provides certain named individuals (not including Beneficiary or any of Beneficiary's lineal descendants) the authority to remove individual or corporate trustees.

Article VII of the Trust 3 Agreement provides that if any trust created under the Trust 3 Agreement shall not have terminated prior to the twenty-first anniversary of the death of the last to die of the descendants of the fathers of Grantor 1 and Wife who shall have been living on both Date 1 and Date 2, such trust shall terminate on that anniversary, and the then principal thereof shall be distributed to the person for whose primary benefit such trust shall then be held.

Trustee is the current corporate trustee of Trust 1 and Trust 2, and will be the corporate trustee of Trust 3. Trustee proposes to pay over the trust estate of Trust 1 and Trust 2 to Trust 3, under its discretionary authority to pay over the trust estates to or

for the benefit of a class of persons which includes Beneficiary. These transfers, which are represented as being distributions under §§ 661 and 662, will result in the termination of Trust 1 and Trust 2. It is further represented that Trust 1 and Trust 2 do not have any items that would be deductible by Trust 3 under § 642(h).

State Statute provides that a trustee who has the absolute discretion under the terms of a testamentary instrument or irrevocable inter vivos trust agreement, to invade the principal of a trust for the benefit of one or more proper objects of the exercise of the power, may exercise such discretion by appointing all or part of the principal of the trust in favor of a trustee of a trust under an instrument other than that under which the power to invade is created or under the same instrument, provided, however, that the exercise of such discretion (A) does not reduce the fixed income interest of any income beneficiary of the trust, (B) is in favor of the proper objects of the exercise of the power, and (C) does not violate the applicable state limitations on powers and immunities of executors and testamentary trustees.

Rulings Requested

Trustee has requested rulings that the distributions from Trust 1 and Trust 2 to Trust 3: (1) will not cause any person to be treated as the owner of any portion of Trust 3 for federal income tax purposes under §§ 671 to 679; (2) will not cause the assets of Trust 3 to be included in Beneficiary's gross estate (or the gross estate of any child of Beneficiary) for federal estate tax purposes; and (3) will not constitute a gift by Beneficiary or her children that is subject to the federal gift tax. The trustee also requests a ruling that future transfers from Trust 3 will not be subject to the GST tax.

Ruling 1

Section 671 of the Internal Revenue Code provides that where it is specified in subpart E of part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 672(c) provides that for purposes of subpart E of part I of subchapter J, the term "related or subordinate party" means any nonadverse party who is (1) the grantor's spouse if living with the grantor or (2) any one of the following: the grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

Sections 673 through 678 specify the circumstances under which the grantor or a person other than the grantor is treated as the owner of a portion of a trust.

Section 673 provides that the grantor shall be treated as the owner of any portion of a trust in which the grantor has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds 5 percent of the value of such portion.

Section 674(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

Section 674(c) provides that § 674(a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor (1) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries or (2) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

Under § 675 and applicable regulations, the grantor is treated as the owner of any portion of a trust if, under the terms of the trust agreement or circumstances attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiary of the trust.

Section 676(a) provides that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of part I, subchapter J, chapter 1, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.

Section 677(a) provides, in general, that the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under § 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be (1) distributed to the grantor or the grantor's spouse; (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse.

Section 332(a)(1) of the Tax Reform Act of 1969, P.L. 91-172, amended § 677(a)(1), (2), and (3) by striking out "the grantor" each place where it appears and inserting in lieu thereof "the grantor or the grantor's spouse." This amendment is effective with respect to property transferred in trust after October 9, 1969.

Section 678(a) provides, in general, that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principals of §§ 671 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Based solely on the facts and representations submitted, we conclude that an examination of Trust 1, Trust 2, and Trust 3 (collectively “the Trusts”) reveals none of the circumstances that would cause Grantor 1 or any other person to be treated currently as the owner of any portion of the Trusts under §§ 673, 674, 676, 677, or 678. An examination of Trust 1 and Trust 3 reveals none of the circumstances that would cause administrative controls to be considered exercisable primarily for the benefit of Grantor 1 under § 675. Thus, the circumstances attendant on the operation of Trust 1 and Trust 3 will determine whether Grantor 1 will be treated as the owner of any portion of Trust 1 and Trust 3 under § 675. This is a question of fact, the determination of which must be deferred until the federal income tax returns of the parties involved have been examined by the office with responsibility for such examination.

We further conclude that the payment by the trustee of all or part of the trust estate of Trust 1 and Trust 2 to Trust 3, under its discretionary authority to pay over the trust estate to or for the benefit of a class of persons which includes Beneficiary, will not result in any person being treated as the owner of any portion of Trust 3 under §§ 671 through 678.

Ruling 2

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money’s worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 20.2036-1(b)(3) of the Estate Tax Regulations provides that the phrase “right ... to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom” includes a reserved power to designate the person(s) to receive the income from the transferred property, during the decedent’s life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death. With respect to such a power, it is immaterial (i) whether the power was exercisable alone or only in conjunction with another person(s), whether or not having an adverse interest; (ii) in what capacity the power was exercisable by the decedent; and (iii) whether the exercise of the power was subject to a contingency beyond the decedent’s control which did not occur before his death (e.g., the death of another person during the decedent’s lifetime). The phrase, however, does not include a power over the transferred property itself which does not affect the enjoyment of the income received or earned during the decedent’s life. Nor does the phrase apply to a power held solely by a person other than the decedent. But, for example, if the decedent reserved the unrestricted power to remove or discharge a trustee at any time and appoint himself as trustee, the decedent is considered as having the powers of the trustee.

Section 20.2036-1(b)(2) provides that the term “use, possession, right to the income, or other enjoyment of the transferred property” is considered to have been retained by or reserved to the decedent to the extent that the use, possession, right to the income, or other enjoyment is to be applied toward the discharge of a legal obligation of the decedent, or otherwise for his pecuniary benefit.

Section 2037(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money’s worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of such reversionary interest immediately before the death of the decedent exceeds five percent of the value of such property.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money’s worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, revoke, or terminate, or where the decedent relinquished any such power during the three year period ending on the date of the decedent’s death.

In order for §§ 2036-2038 to apply, the decedent must have made a transfer of property or any interest therein (except in the case of a bona fide sale for an adequate

and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. Trustee, who has no beneficial interest in Trust 1 or Trust 2, proposes to distribute the assets of Trust 1 and Trust 2 to Trust 3 pursuant to Trustee's discretionary authority under the terms of the trusts and State Statute. After the transfer neither Beneficiary nor her issue will be able to make discretionary distributions from Trust 3 even if they are acting as trustee or co-trustee. No trustee will be able to pay or apply the income or principal of the trust for his or her own pecuniary benefit or for the discharge of his or her legal obligations. We therefore conclude that the proposed distributions from Trust 1 and Trust 2 to Trust 3 will not cause the interest of Beneficiary or any of her issue to be includible in a beneficiary's gross estate under §§ 2036-2038.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has, at the time of his death, a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of § 2041(a)(2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(b)(1) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) provides, in part, that a donee may have a power of appointment if he has the power remove or discharge a trustee and appoint himself. For example, if under the terms of the instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of the fiduciary duties is not a power of appointment.

Neither Beneficiary nor any of her issue have the authority under the Trust 3 Agreement to remove a trustee and appoint themselves. In addition, Beneficiary and her issue are specifically prohibited from making discretionary distributions if they are acting as trustee. Beneficiary's testamentary power of appointment over the Trust 3 assets is sufficiently limited to prevent the assets from being included in her estate under § 2041. Article II of the Trust 3 Agreement, however, provides a child of Beneficiary with a general power of appointment over any assets set aside in a separate trust for that child. Upon that child's death, any assets in the separate trust will be included in that child's gross estate under § 2041.

Ruling 3

Section 2501(a) imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual, resident or nonresident.

Section 2511(a) provides that the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed to be a gift, and is included in computing the amount of gifts made during the calendar year.

In this case, each original grantor established an irrevocable trust and did not retain the right to alter or amend the trust. The assets of Trust 1 and Trust 2 will be distributed by Trustee to Trust 3. Trustee has no beneficial interest in Trust 1, Trust 2, or Trust 3. The assets of each trust will be distributed under Trustee's discretionary authority under the terms of each trust and State Statute. Accordingly, based on the facts submitted and representations made, we conclude that the distribution of assets from Trust 1 and Trust 2 to Trust 3 as proposed is not a transfer, direct or indirect, of property that will constitute a gift by Beneficiary or her children that is subject to the federal gift tax under § 2501.

Ruling 4

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines the term "generation-skipping transfer" to include a taxable distribution, taxable termination, and a direct skip.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, GST tax provisions do not apply to any generation-skipping transfer under a trust (as defined in § 2652(b)) that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(1)(ii)(A) provides that, except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust except as provided in §§ 26.2601-1(b)(ii)(B) or (C), which relate to property includible in a grantor's gross estate under §§ 2038 and 2042. In the present case, Trust 1 and Trust 2 are considered to have been irrevocable on September 25, 1985, because neither § 2038 nor § 2042 applies.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. The rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(A) provides that the distribution of trust principal from an exempt trust to a new trust or retention of trust principal in a continuing trust will not cause the new or continuing trust to be subject to the provisions of chapter 13, if (1) either (i) the terms of the governing instrument of the exempt trust authorize distributions to the new trust or the retention of the trust principal in a continuing trust, without the consent or approval of any beneficiary or court; or (ii) at the time the exempt trust became irrevocable, state law authorized distributions to the new trust or retention of principal in the continuing trust, without the consent or approval of any beneficiary or court; and (2) the terms of the governing instrument of the new or continuing trust do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of twenty-one years, plus if necessary, a reasonable period of gestation. For purposes of paragraph (b)(4)(i)(A), the exercise of a trustee's distributive power that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date the original trust became irrevocable) will not be considered an exercise that postpones or suspends vesting, absolute ownership, or the power of alienation beyond the perpetuities period. If a distributive power is exercised by

creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

Section 26.2601-1(b)(4)(i)(E), Example 1, provides that in 1980, Grantor established an irrevocable trust (Trust) for the benefit of Grantor's child, A, A's spouse, and A's issue. At the time Trust was established A had two children, B and C. A corporate fiduciary was designated as trustee. Under the terms of Trust, the trustee has the discretion to distribute all or part of the trust income to one or more of the group consisting of A, A's spouse, or A's issue. The trustee is also authorized to distribute all or part of the trust principal to one or more trusts for the benefit of A, A's spouse, or A's issue under terms specified by the trustee in the trustee's discretion. Any trust established under Trust, however, must terminate twenty-one years after the death of the last child of A to die who was alive at the time Trust was executed. Trust will terminate on the death of A, at which time the remaining principal will be distributed to A's issue, per stirpes. In 2002, the trustee distributes part of Trust's principal to a new trust for the benefit of B and C and their issue. The new trust will terminate 21 years after the death of the survivor of B and C, at which time the trust principal will be distributed to the issue of B and C, per stirpes. The terms of the governing instrument of Trust authorize the trustee to make the distribution to a new trust without the consent or approval of any beneficiary or court. In addition, the terms of the governing instrument of the new trust do not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of Trust, extending beyond any life in being at the date of creation of Trust plus a period of twenty-one years, plus if necessary, a reasonable period of gestation. Therefore, neither Trust nor the new trust will be subject to the provisions of chapter.

In this case Trust 1 and Trust 2 are GST trusts because they provide for distributions to more than one generation of beneficiaries below the grantor's generation. Date 1 and Date 2 are prior to September 25, 1985, and Trust 1 and Trust 2 were irrevocable on September 25, 1985. Trust 1 and Trust 2, therefore, are exempt from the GST tax pursuant to § 26.2601-1(b)(1)(i).

The transaction proposed by the trustees is within the authority granted to them in Article Fourth of the Trust 1 and Trust 2 agreements and under State Statute. In addition, the distribution of the Trust 1 and Trust 2 assets to Trust 3 will not extend the time for vesting of any beneficial interest in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period extending beyond any life in being on the date each trust was created plus twenty-one years. Based on the facts submitted and the representations made, we conclude that the proposed distribution of Trust 1 and Trust 2 assets into Trust 3 is substantially similar to the transaction in Example 1 of § 26.2601-1(b)(4)(i)(E). Therefore, the proposed transaction will not affect the status of Trust 1 and Trust 2 as exempt from the

GST tax. As a result, the proposed transaction will not cause distributions from or terminations of any interests in Trust 1, Trust 2, or Trust 3 to be subject to the GST tax.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. We specifically express no opinion as to whether any person would be treated as the owner of any portion of the Trust 1, Trust 2, or Trust 3 under §§ 671 through 678 if the corporate trustee of the trusts is replaced with a trustee who is either not an independent trustee for purposes of § 674(c) or who would thereby acquire a power described in § 678(a)(1). Furthermore, we express no opinion as to the application of §§ 61 and 1001.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Melissa C. Liquerman

Melissa C. Liquerman
Branch Chief, Branch 9
(Passthroughs & Special Industries)

Enclosure

Copy of this letter for § 6110 purposes